deregulated technologies and services which could serve far better the interests of the various providers and the public – possibly even discouraging deployment of xDSL technology itself.

- The issue of LEC investment is the focus the PaISP. PaISP contends that network problems cited by LECs are the result of decreased network investment, not the result of ESP usage.[30] Pennsylvania relies on some very suspect statistics to support its claim, ultimately concluding that from December 1990 until December 1994, LECs had collected more than $80 billion in depreciation and amortization expense from their customers but had only "increased their investment in plant by approximately $35 billion."[31]

In fact, because of additions, retirements and other items, the change in total gross plant cannot be equated with investments made by carriers. In U S WEST's case, for the period 1992 through 1996, total investment exceeded MR depreciation expense by almost $2.2 billion.

| Year | Capital Expenditures | MR Depreciation Expense | Excess Capital Over Depreciation |
|---|---|---|---|
| 1996 | $2.806 billion | $2.501 billion | $305 million |
| 1995 | $2.739 billion | $2.300 billion | $439 million |
| 1994 | $2.477 billion | $2.151 billion | $326 million |
| 1993 | $2.226 billion | $1.826 billion | $400 million |
| 1992 | $2.385 billion | $1.681 billion | $704 million |

[30] PaISP at 11-14.

[31] Id. at 12.

## VI. CARE MUST BE TAKEN THAT CARRIER/NON-CARRIER DISTINCTIONS ARE NOT MANIPULATED TO THE DETRIMENT OF COMPETITION

The fact that ESPs are characterized as end users for FCC regulatory purposes caused some interesting comments to be filed which illustrate the continuing dangers of permitting important segments of the telecommunications industry to grow up around regulatory anomalies, rather than around market and technological forces. On the one hand, a number of commentors suggest that ESPs should be classified as carriers and be regulated in the same manner as are common carriers today.[32] This is particularly the case for those Internet Service Providers which will be providing voice connections in the near future — thus competing directly with common carriers providing the identical service via circuit-switched technologies.[33] ESPs, on the other hand, point out that Internet voice connectivity will be a function generally of the customer premises equipment ("CPE") employed by the customer, and that it would make very little sense to make an ESP's carrier status depend on the type of CPE employed by the customer. At the same time, however, ESPs find themselves arguing that they should be entitled to the full panoply of network benefits set forth in the Telecommunications Act of 1996 without assuming any of the duties assigned to carriers under the Act. And, of course, if classified as carriers, Internet Service Providers would be responsible for payment of carriers' carrier charges under the current rules.

---

[32] See, e.g., TRA at 13; ACTA at 4; CompTel at 2-3.

[33] See GCI at 2-3; TRA at 14-18.

U S WEST submits that the dispute over the carrier/non-carrier distinction says far more about the fact that the industry has outgrown the regulatory structure than it does about any real differences between Internet Service Providers and common carriers as currently defined and classified. The comments reflect one absolute agreement — being designated as a common carrier carries regulatory baggage which is seriously burdensome and unnecessary. There is no good reason why Internet services should not be able to grow into full competitors of existing carriers. By the same token, there is no reason why such growth should be supported by a regulatory structure which imposes burdens on carriers which are not imposed on Internet Service Providers. Moreover, the obvious solution — impose carrier regulations on everyone alike — is generally perceived by the ESP commentors as potentially ruinous of the industry (which itself probably says a great deal about the true nature of common carrier regulation).

For the most part, U S WEST does not favor extending the reach of the FCC's (or of states') common carrier jurisdiction into an industry which seems to have grown strong in an unregulated mode, at least in the absence of compelling evidence to the effect that such extension of common carrier regulation is necessary to protect the public interest. On the other hand, the main difference between entities classified as common carriers today and Internet Service Providers is the technology employed to provide service, which seems to provide a very poor reason for a regulatory classification carrying such significant consequences. We suggest that the Commission use the following principles to guide it in determining proper carrier regulation of Internet Service Providers and other ESPs.

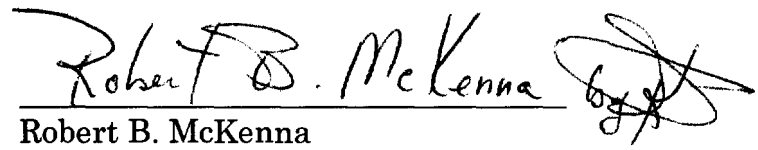
- The ESP exemption can and should be eliminated based on network usage characteristics without classifying or regulating ESPs as carriers. There is no necessary relationship between carrier status and paying usage-sensitive prices for switching and transport.
- Whether or not ESPs (or some ESPs) are classified as carriers, the fact that ESPs and carriers compete in essentially the same marketplace should be recognized in determining when and whether to deregulate the services of existing carriers. The Commission has clear authority to deregulate carrier services,[34] and coexisting ESPs in a market should be considered in evaluating the state of competition in a market.
- Finally, ESPs should be granted the special rights available to carriers under the 1996 Act only so long as they agree to assume the duties imposed on carriers under the Act (most especially Sections 251(a) and (b)). U S WEST agrees that it makes sense to bring ESPs and carriers closer together from a regulatory perspective, but ESPs should be able to control such movement (should they so desire) only by assuming the duties of carriers along with the benefits accruing to carriers. Allowing ESPs to obtain

[34] See 47 U.S.C. § 410.

carrier-like network benefits without assuming concomitant obligations would be contrary to the entire thrust and focus of the 1996 Act.

Respectfully submitted,

U S WEST, INC.

By: 

Robert B. McKenna
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Its Attorney

Of Counsel,
Dan L. Poole

April 23, 1997

EXHIBIT A

**Subject: Fwd: Connect To AOL With Ease (For Free)**
**Date:** Fri, 18 Apr 1997 01:56:04 -0400 (EDT)
**From:** MachFront@aol.com
**To:** jgbarlo@uswest.com

---

Forwarded message:
From: Phone@att.com
Reply-to: Phone@att.com
To: Phone@att.com
Date: 97-04-17 12:27:05 EDT

Are You Hearing Busy Signals When You
Try To Connect To America Online?

We Can Help!

Our phone company has created a software program that can connect you to America Online with ease--and we're giving it away for free. If you're tired of listening to busy signals, this program can help.

Simply run our program before you try to connect to AOL, and the software will persistently attempt to log on to AOL until it succeeds.

This is one tough piece of software. It will not let up until it gets you connected! The moment a free line becomes available, the program will sign you in.

Similar programs have sold for $20 to $50. But we're giving our software awa for free!

If you sign up for long-distance phone service with UST (we're the nation's #4 phone company) between now and April 30, we'll rush you a free copy of ou software.

What's more, because our long-distance service costs less than the three biggest carriers', you'll also enjoy a lower phone bill.

We only charge 12.9 cents a minute for long distance. Here's how that compares to the major long-distance companies:

AT&T-
Their 15 cents a minute charge is only slightly higher than our rate, but th difference does add up. (Note: Much of UST's service operates on AT&T's phon lines.)

Sprint-
Their 10 cents a minute rate is attractive but it's restricted to late night and weekends. At peek times, Sprint charges a high 25 cents a minute. WE CHARGE THE SAME RATE 24-HOURS A DAY 7-DAYS A WEEK.

MCI-

Like AT&T, they charge 15 cents a minute, but they offer a 3 cent discount t heavy users. All our customers get the same low rate, regardless of their monthly usage.

(Note: All rates listed here--including ours--are for calls made within the continental United States.)

As the above comparison shows, if you sign up for our long distance service, you'll not only connect to America Online faster, you'll also save money every month.

Who We Are:

US Telephone is the #4 long-distance company in the country. Though we don't spend as much on advertising as the big three carriers do, by offering the lowest rates possible, we've been able to grow our customer-base and become the #4 phone company.

Our GUARANTEE to you:

We're so sure that you will save money with us, that we guarantee it. If you are ever dissatisfied with our service, you can switch back to your original phone company and we will NOT charge you for the switch. And whether you continue to use our service or not, you can keep the AOL connection program as our FREE gift to you.

To receive your free software and sign up with our company, send no money. Instead, simply complete the following 3 easy parts and mail them to us.

Part 1: Tell us about the owner of the phone number that you'd like to switc to our service.

Owner's Name: _____

Company Name (if applicable): _____

Where is the phone located?

Address: _____

City, State Zip: _____

What is the billing address (if different)?

Address: _____

City, State Zip: _____

Which phone numbers would you like to have switched to our service?

_____

Is the phone number a business or residential line?

---

Part 2: Initial your agreement to the following terms.

• I will receive a free copy of our software--which will ease my connection to America Online. (Note: The software will not work if you own an Apple brand computer.)

• I will be charged 12.9 cents per minute for interstate calls made to anyon within the continental United States.

• I will be charged in six second increments. (Which means that if I talk fo a minute and 6 seconds, I will be charged for a minute and 6 seconds--not fo a full TWO minutes.)

• I will not be charged a minimum monthly fee.

• I may cancel UST's service at any time.

Phone Owner's Initials: _____

Part 3: Authorize us to switch you to our phone service, by signing the following.

THE UNDERSIGNED CUSTOMER DOES HEREBY AUTHORIZE INTERNET LONG-DISTANCE TO ACT ON BEHALF OF THE CUSTOMER TO MAKE ANY AND ALL DECISIONS RELATED TO CUSTOMER'S TELECOMMUNICATIONS SERVICES AND CUSTOMER AGREES TO PAY FOR THE TELECOMMUNICATION SERVICES UTILIZED BY CUSTOMER.
THIS LETTER OF AUTHORITY DOES HEREBY GIVE INTERNET LONG-DISTANCE THE AUTHORITY TO NEGOTIATE ON BEHALF OF CUSTOMER FOR TELECOMMUNICATION SERVICES, OBTAIN ALL PERTINENT INFORMATION CONCERNING TELECOMMUNICATION SERVICES, AND SIGN ALL DOCUMENTS FOR THE CUSTOMER RELATED TO TELECOMMUNICATIONS SERVICES.

Phone Owner's Name: _____

Phone Owner's Signature: _____

Date: _____

One you've completed the above 3 parts, mail them to us at:

US Telephone
Quick Connect To AOL Offer
Department PH12
PO Box 660127
Flushing, NY 11366

Remember, we guarantee your satisfaction.

**Subject: Fwd: Having Trouble Connecting To AOL?**
**Date:** Fri, 18 Apr 1997 01:58:41 -0400 (EDT)
**From:** MachFront@aol.com
**To:** jgbarlo@uswest.com

---

Forwarded message:
From: Solutions@Mci.com
Reply-to: Solutions@Mci.com
To: Solutions@Mci.com
Date: 97-04-04 08:03:35 EDT

ARE YOU HAVING TROUBLE CONNECTING
TO AMERICA ONLINE?

Don't Give Up On AOL
Our Software Can Help You

If you've grown so tired of waiting to sign on to AOL that you considered switching to another company, DON'T. There's a reason why AOL's lines are busy and other companies' lines aren't:

AOL is the BEST Internet service provider.

So don't make the mistake of switching to a less popular number two. Instead if you're having trouble connecting to AOL, let us help.

Our new software program, called "Let Me In !", can help get you through the busy signals. Simply run the program before you try to connect to AOL, and the software will persistently keep trying to log on to AOL for you until it succeeds.

"Let Me In !" is one tough piece of software. It will not let up until it gets you connected ! The moment a free line becomes available, it will sign you on to AOL.

---

Whether you use AOL for
PLEASURE, SCHOOL OR BUSINESS,
you'll benefit from this software.

---

We understand the aggravation you must feel every time you try to log on to the Internet and get nothing but busy signals. If you've grown tired of the frustration, simply order your copy of "Let Me In !" today and start enjoyin your on line time again.

To help get you through this difficult time, we are now selling "Let Me In ! for only $8.50. (To take advantage of this price, please respond by April

18.)

==========

We Gladly Accept
Visa, Master Card, and American Express

==========

To order your copy, fill out the following form and mail it to the address a the bottom. (For your protection, credit card customers must provide the cardholder's name and billing address in the lines below.)

Name_____

Address_____

City, State, Zip_____

Phone_____

E-Mail Address_____

CREDIT CARD ORDERS:
Please provide the following information

Card Number: _____

Card Name (circle one): Visa, Master Card, American Express

Card's Expiration Date: _____

I have entered my credit card's billing address above and I authorize Zeros And Ones to charge my credit card $8.50 plus $1.50 shipping and handling.

Card Holder's Name: _____

Cardholder's Signature: _____

Date: _____

PAYMENTS BY CHECK OR MONEY ORDER:
Make your payment of only $8.50 plus $1.50 shipping and handling to "Zeros And Ones."

SEND YOUR ORDER TO:

"Let Me In !"
Zeros And Ones
Department LE10
PO Box 660107
Flushing, NY 11366

Order your copy of "Let Me In !" today. Your time is worth the $8.50.

EXHIBIT B

# INTERNET SERVICE PROVIDER 1997 NETWORK USAGE

Attached are some examples of the peg count, usage and line busies generated by 5 internet providers. All of these IPs are served from the same switch. The traditional busy hour for this switch is 1900 to 2000. It is primarily a residential switch. Also included are graphs of corresponding trunk data for this same office. There is a comparison of the same week in 1996 and 1997. (The trunk data does not include peg count from Independent offices connecting to this switch so the actual peg count would be higher than what is depicted on the graph. The usage does include Independent traffic.) It has no local tandem arrangement for handling alternate final traffic. All trunking is direct trunked between offices within the local area.

These graphs are typical of what U S WEST is seeing across the region. This data illustrates several key points:

• Internet Providers (IPs) use the network elements all day long and not just in off-peak hours as they would have the world believe. In fact in this particular office, the heaviest usage falls directly in the office's "normal" busy hour. (In one case in particular, IP "B", the lines were in use at 36 CCS all day long.) In other situations, the IP traffic actually changes the "normal" busy hour and causes additional equipment requirements in the "new" busy hour.

• IPs generate a great deal more traffic than they can terminate. The line busy graphs show the number of calls that were delivered to the IP and received a normal busy signal. These are not "blocked" calls due to unavailability of equipment in the network. In one case, in a 10 hour period, we offered 31,000 calls to a particular IP and the IP was only able to handle 1000 of these calls.)

• The IPs' inability to terminate the traffic they stimulate, generates a multitude of redials which continue to tie up the common equipment within the PSTN for non-productive calls (note increase of peg-count at times when busies are highest). This results in the unavailability of the common equipment for use by other voice callers attempting to place calls not destined for the IP itself. These non-IP calls are then blocked because of the lack of availability of equipment being held by long IP calls. Other callers attempting to get to the IP are also blocked.

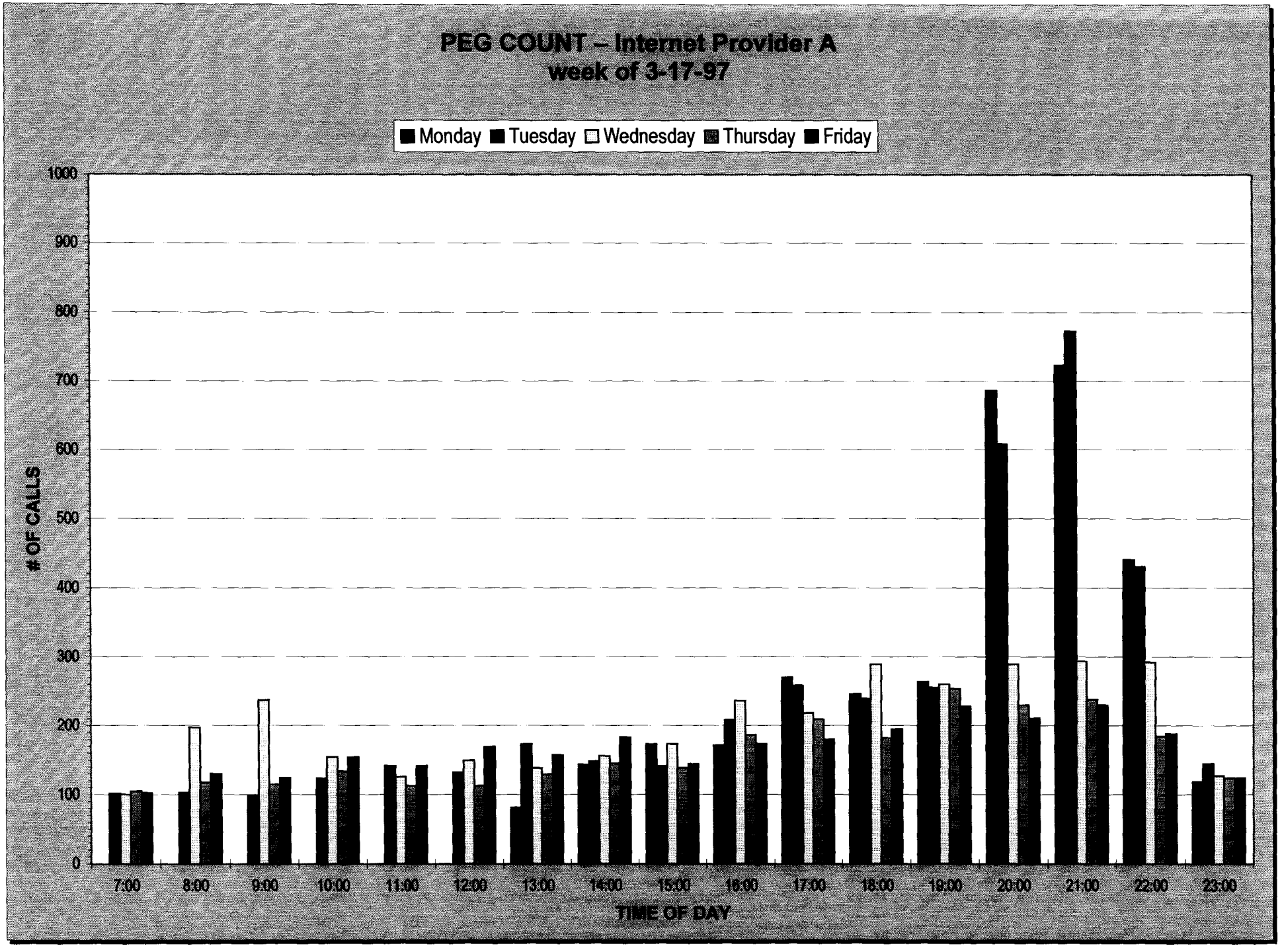
• The calling patterns generated by the IPs has caused considerable reballancing in offices designed to handle primarily residential traffic. These offices use 4:1 (i.e., for every four lines into an office there is one path out of the office), 6:1 or even 8:1 line concentration ratios. Because of the long holding times for these IP calls, a single user can tie up the only path for multiple hours at a time, which does not allow other traffic to complete. U S WEST has spent considerable dollars reballancing these offices and in some cases has had to change to a 1:1 concentration ratio. This is expensive and is not covered by the

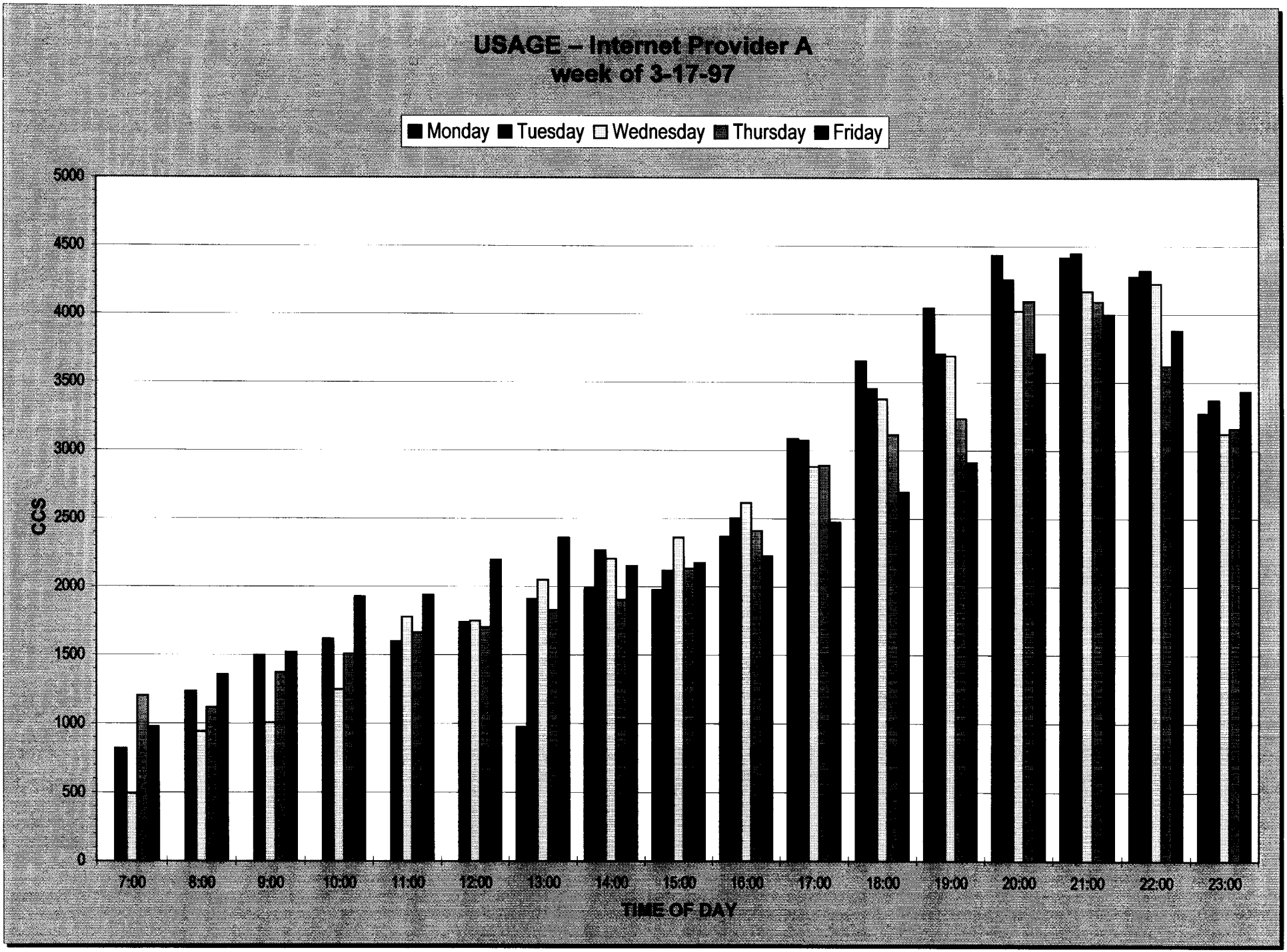
normal tariff rates which assume the ability to share network components among many users.

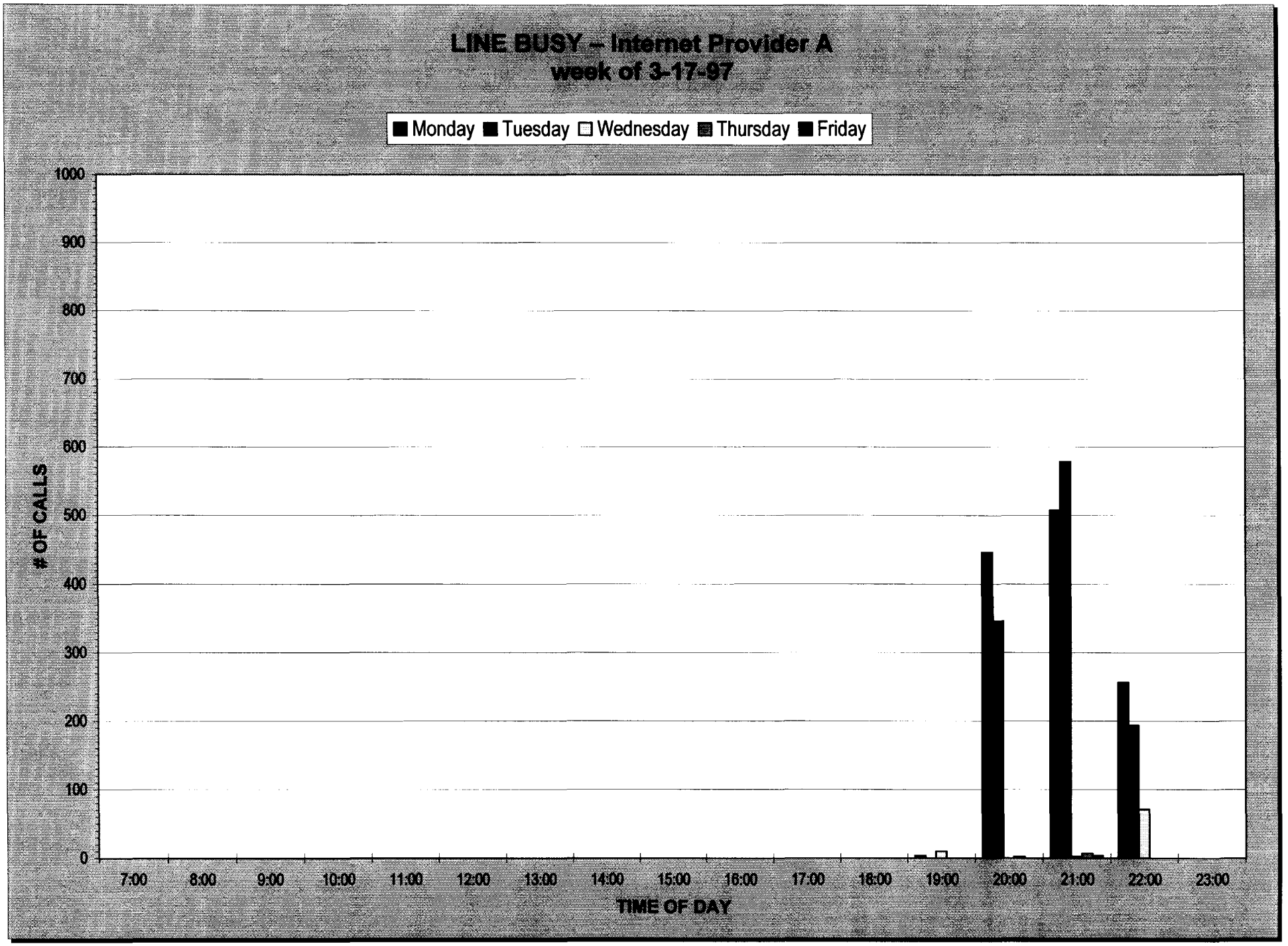
• The "normal" busy hour for the switch is no longer a single hour with perhaps a couple of side hours, but instead high usage is stretching throughout the day.

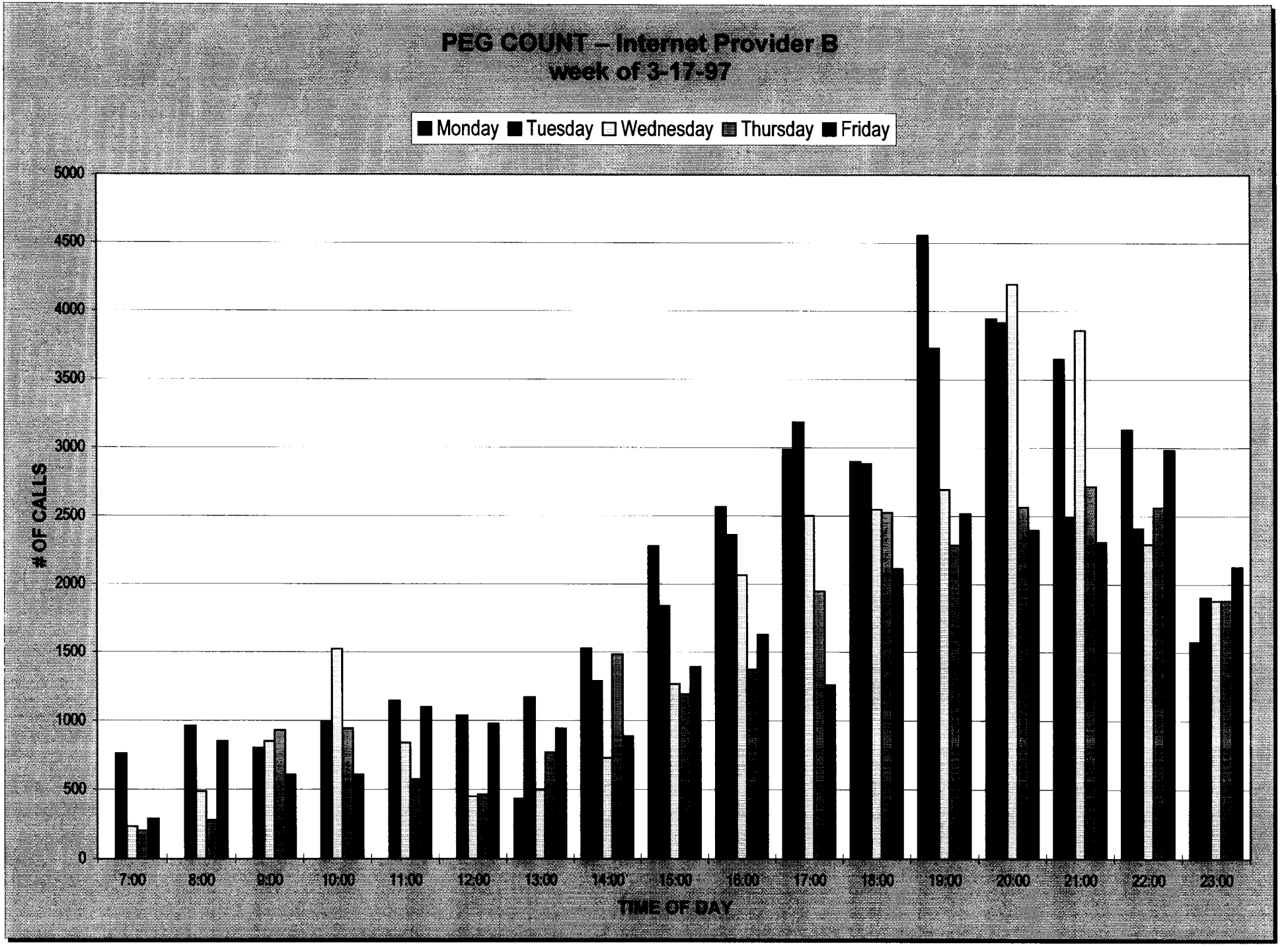
• The trunk data associated with this office shows a drastic increase in call volumes in just one year. From 6/30/95 to 6/30/96 the maximum CCSgrowth was 69 %. From 6/30/96 to 3/31/97 (not even a complete year), the maximum growth experienced was 382 %.

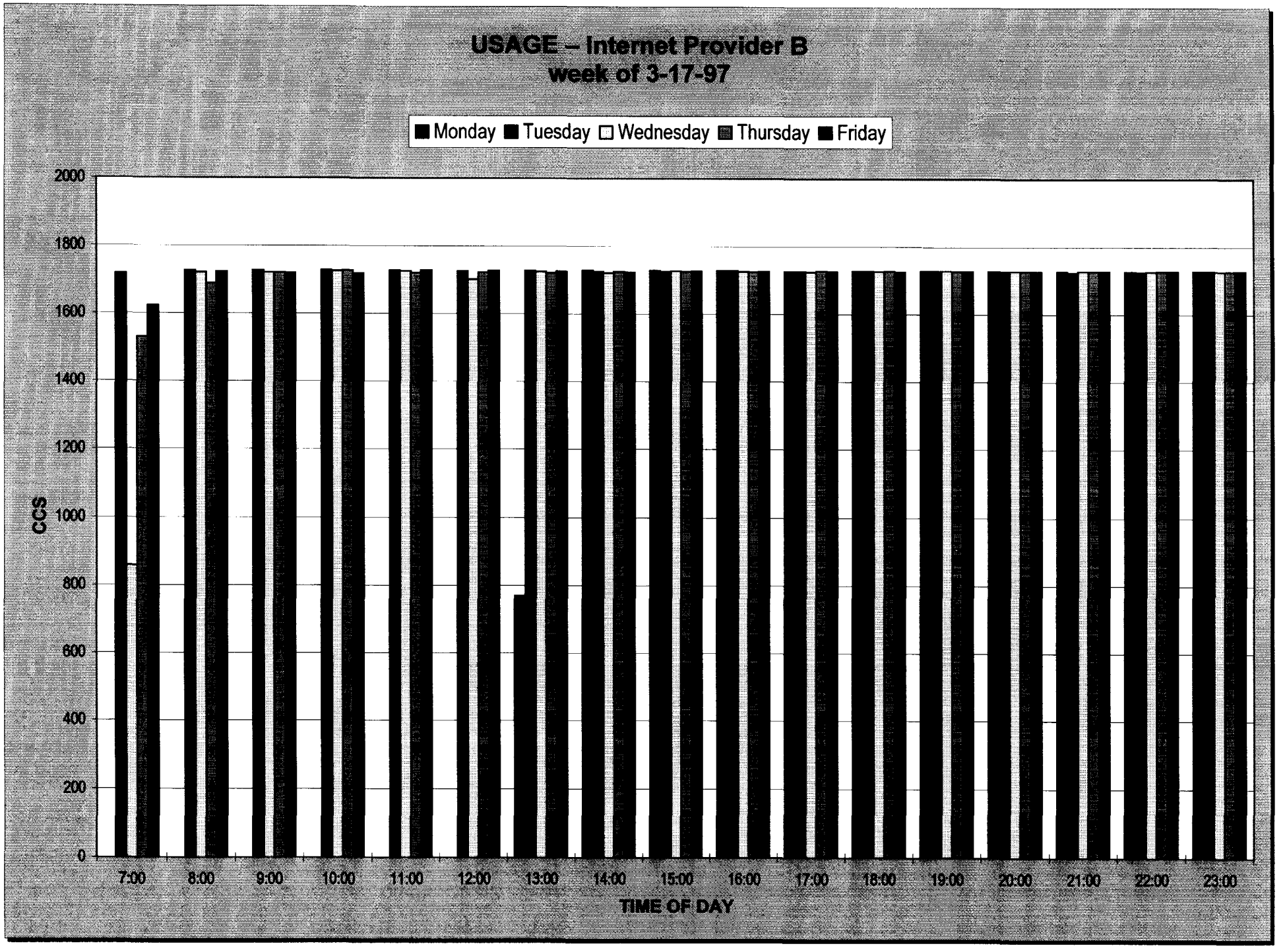
• The traffic characteristics and calling patterns for this office and the associated trunk groups have been greatly impacted by the large presence of IPs resident in this switch. Unanticipated growth has resulted in severe blocking problems. These problems stem from the long holding times of IP users and their inability to terminate all of the traffic that they generate resulting in numerous redials. The redials play havoc with the infrastructure and cause massive buildouts to handle non-productive calls.


PEG COUNT – Internet Provider A
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
# OF CALLS
1000
900
800
700
600
500
400
300
200
100
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


USAGE – Internet Provider A
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
CCS
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


LINE BUSY – Internet Provider A
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
# OF CALLS
1000
900
800
700
600
500
400
300
200
100
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


PEG COUNT – Internet Provider B
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
# OF CALLS
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


USAGE – Internet Provider B
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
2000
1800
1600
1400
1200
1000
800
600
400
200
0
CCS
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
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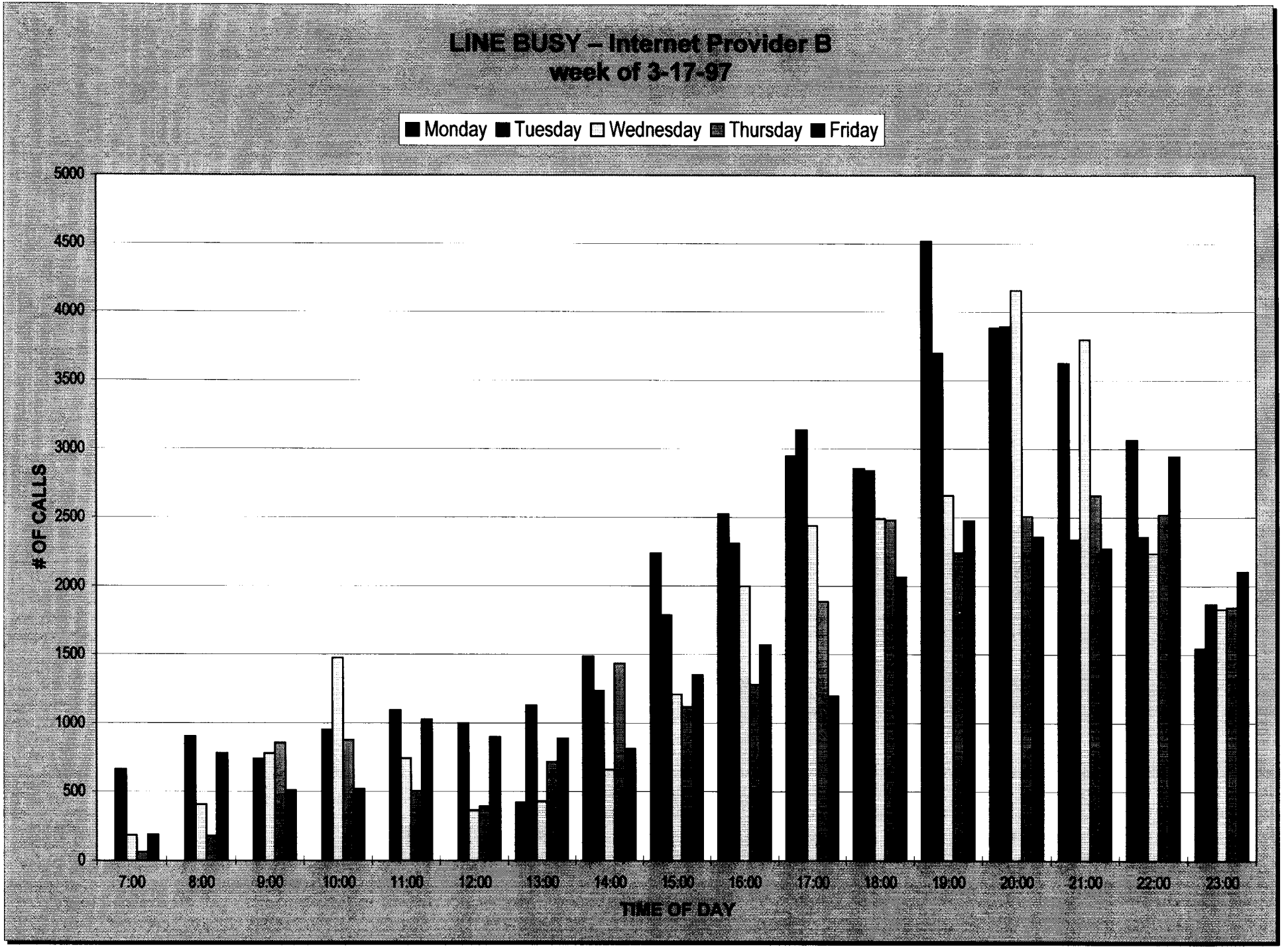
21:00
22:00
23:00
TIME OF DAY


LINE BUSY – Internet Provider B
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
# OF CALLS
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
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19:00
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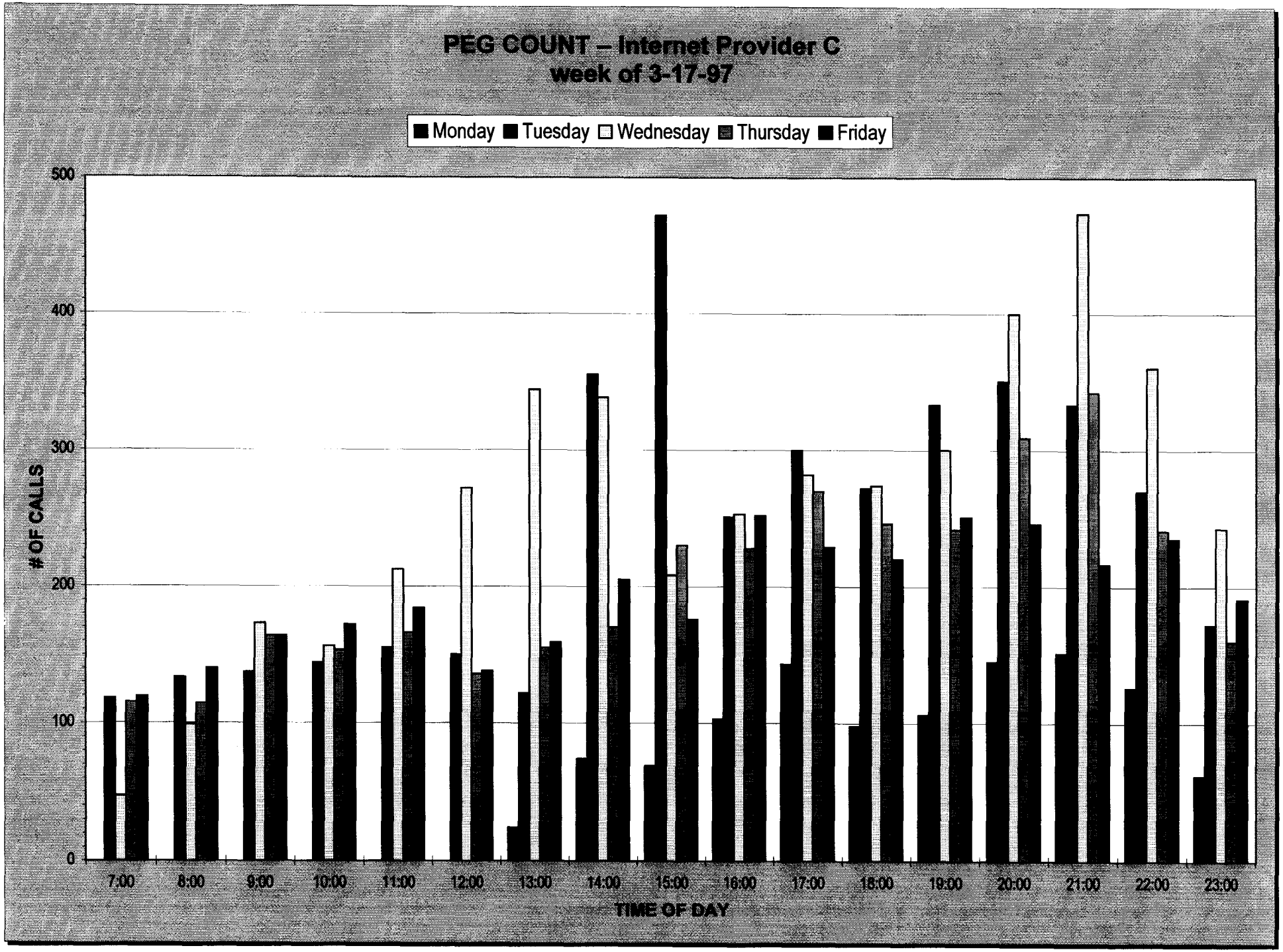
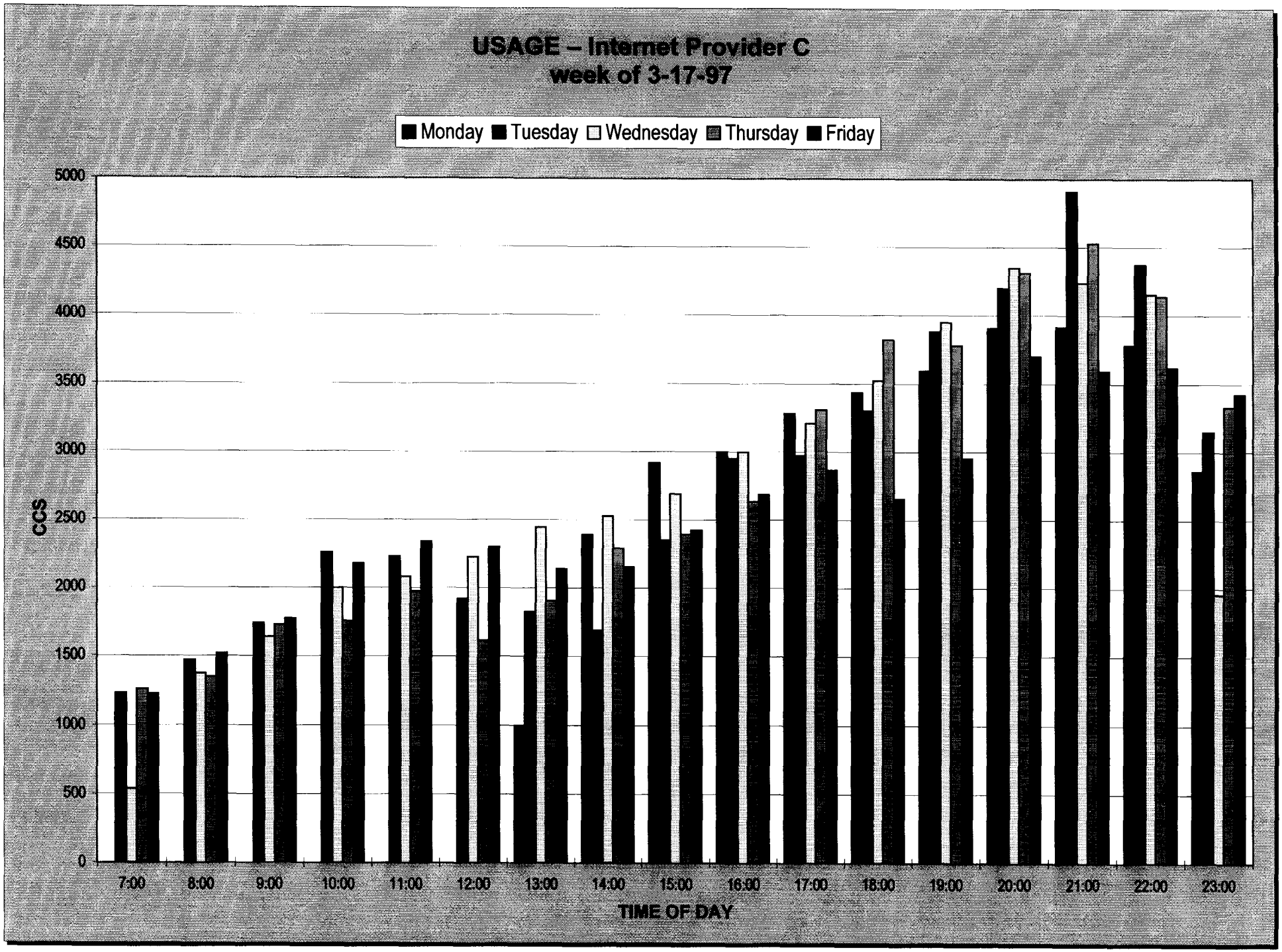
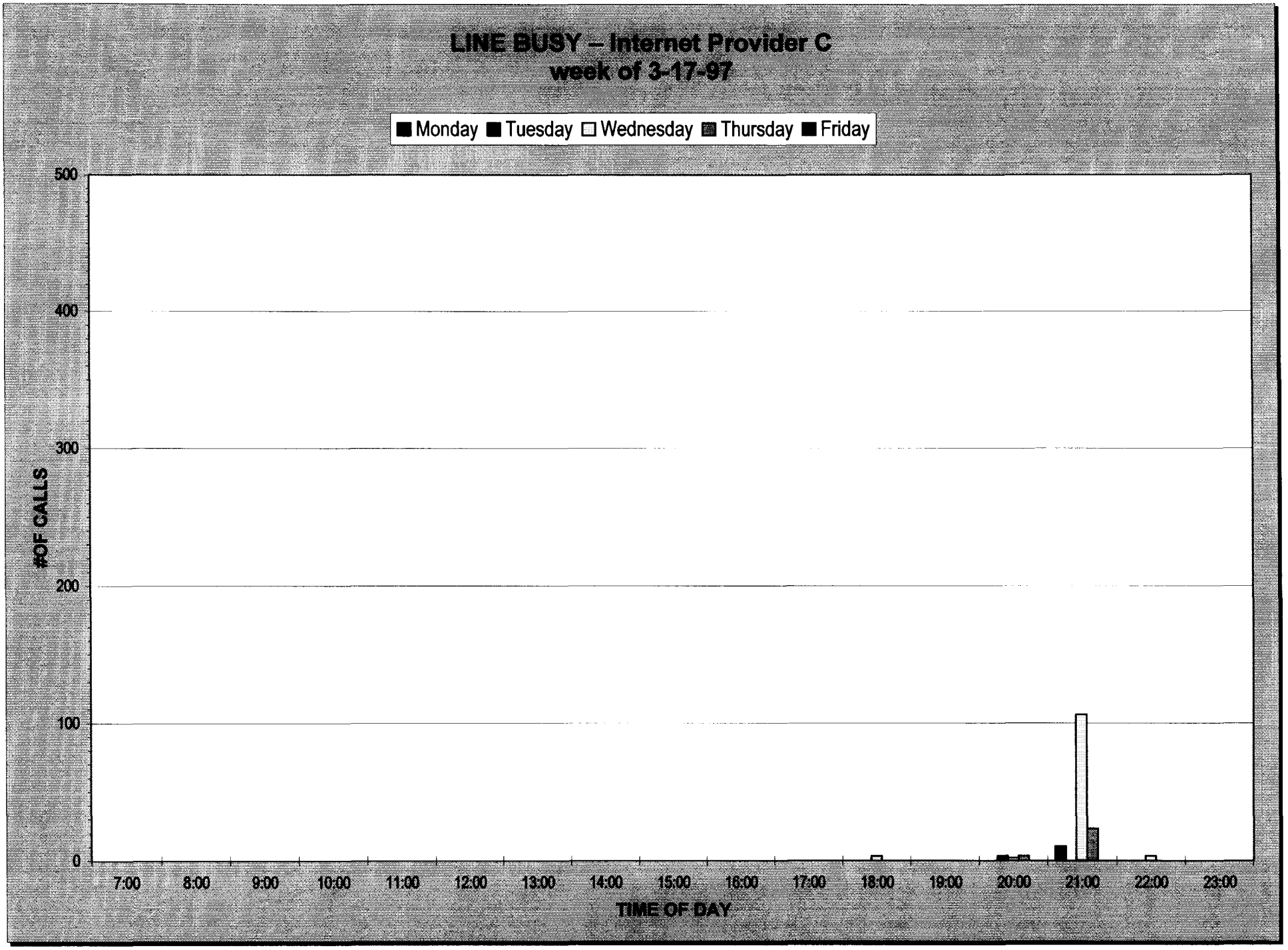
21:00
22:00
23:00
TIME OF DAY


PEG COUNT – Internet Provider C
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
500
400
300
200
100
0
# OF CALLS
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


USAGE – Internet Provider C
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
CCS
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY


LINE BUSY – Internet Provider C
week of 3-17-97
Monday
Tuesday
Wednesday
Thursday
Friday
500
400
300
200
100
0
#OF CALLS
7:00
8:00
9:00
10:00
11:00
12:00
13:00
14:00
15:00
16:00
17:00
18:00
19:00
20:00
21:00
22:00
23:00
TIME OF DAY